

## APPEAL NO. 010620

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2001. With regard to the issue before her, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) appeals that decision claiming that it is against the great weight and preponderance of the evidence. The claimant responds urging affirmance.

### DECISION

Affirmed.

On May 30, 1997, the claimant was employed as a home health care aide, requiring a high degree of physical labor to lift patients. In January of 1998, the claimant had fusion surgery to her cervical spine. The claimant testified that she found work as a home health provider, which required less physical exertion. The claimant also testified that during the qualifying period for the second SIBs quarter she worked four hours a day, while also cooperating with the Texas Rehabilitation Commission (TRC) to complete paperwork necessary to her beginning classes to become a medical assistant. The claimant testified that she was working light duty within the restrictions given by her treating doctor.

The carrier appeals the hearing officer's determination that the claimant made a good faith search for employment commensurate with her ability to work. The hearing officer did not err in determining that the claimant had satisfied the good faith requirement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." The carrier contends that the hearing officer erred in determining that the job the claimant worked during the qualifying period was "relatively equal" because it was not full time. We find no merit in this assertion. We have previously noted that the question of whether the job a claimant works during the qualifying period is a job which is relatively equal to the injured employee's ability to work is a question of fact for the hearing officer and that the focus of the inquiry is on the hours worked and the ability to work. Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000; Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000. In this instance, the hearing officer determined that the claimant had returned to work within her restrictions. That determination is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, it will not be disturbed on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Contrary to the carrier's assertions, where as here the claimant had returned to work in a job relatively equal to her ability to work, she was not required to conduct a job search in accordance with the requirements of Rule 130.102(e) in order to satisfy the good faith requirement.

The hearing officer determined that the claimant's underemployment was a direct result of the impairment caused by the compensable injury. The carrier challenges the hearing officer's direct result determination. Rule 130.102(c) provides that "[a]n injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings." A direct result determination is sufficiently supported if the record establishes that the claimant sustained a serious injury with lasting effects such that she cannot reasonably perform the job she was doing at the time of her compensable injury. Texas Workers' Compensation Commission Appeal No. 001847, decided September 15, 2000; Texas Workers' Compensation Commission Appeal No. 001310, decided July 21, 2000. The evidence establishes that the claimant has a permanent 15-pound lifting restriction and that she cannot work more than four hours a day. That evidence provides sufficient support for the determination that the claimant had reduced earnings during the second quarter qualifying period as a direct result of her impairment from the compensable injury.

The hearing officer's decision and order are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge